IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 1ST NOVEMBER 2006 / 10TH KARTHIKA 1928

OP.No. 1037 of 2003(W)

PETITIONERS:
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1. **K.RAGHAVAN, PRESIDENT, KURICHY GRAMA PANCHAYATH, KURICHY P.O., KOTTAYAM DIST.**

2. **P.V.PRASAD, VICE PRESIDENT, KURICHY GRAMA PANCHAYATH, KURICHY P.O., KOTTAYAM DIST.**

3. **K.D.SUJATHAN, CHAIRMAN, (VIKASANA STANDING COMMITTEE), MEMBER, KURICHY GRAMA PANCHAYATH, KURICHY P.O., KOTTAYAM DIST.**

4. **AMMUKUTTY ABRAHAM, MEMBER, KURICHY GRAMA PANCHAYATH, KURICHY P.O., KOTTAYAM DIST.**

5. **LEENA GEORGE, MEMBER, KURICHY GRAMA PANCHAYATH, KURICHY P.O., KOTTAYAM DIST.**

6. **K.T.ANTONY, MEMBER, KURICHY GRAMA PANCHAYATH, KURICHY P.O., KOTTAYAM DIST.**

7. **SUDHARMA SURENDRAN, MEMBER, KURICHY GRAMA PANCHAYATH, KURICHY P.O., KOTTAYAM DIST.**

8. **M.N.KRISHNAN NAIR, MEMBER, KURICHY GRAMA PANCHAYATH, KURICHY P.O., KOTTAYAM DIST.**

...2/-

9. ABRAHAM CHACKO, MEMBER, KURICHY GRAMA PANCHAYATH, KURICHY P.O., KOTTAYAM DIST.

10. P.K.GOPI, MEMBER, KURICHY GRAMA PANCHAYATH, KURICHY P.O., KOTTAYAM DISTRICT.

11. DR.SOBHA SALIMON, MEMBER, KURICHY GRAMA PANCHAYATH, KURICHY P.O., KOTTAYAM DISTRICT.

12. THOMAS MATHEW, MEMBER, KURICHY GRAMA PANCHAYATH, KURICHY P.O., KOTTAYAM DIST. (FORMER PRESIDENT OF THIS PANCHAYAT).

13. ELSY RAJU, MEMBER, KURICHY GRAMA PANCHAYATH, KURICHY P.O., KOTTAYAM DISTRICT.

14. NIBU ABRAHAM, MEMBER, KURICHY GRAMA PANCHAYATH, KURICHY P.O., KOTTAYAM DIST.

15. P.V.GEORGE, MEMBER, KURICHY GRAMA PANCHAYATH, KURICHY P.O., KOTTAYAM DISTRICT.

16. K.A.CHELLAMMA, PRESENT SECRETARY, KURICHY GRAMA PANCHAYATH, KURICHY P.O., KOTTAYAM DIST.

BY ADV. SRI.PIRAPPANCODE V.SREEDHARAN NAIR
SRI.S.P.ARAVINDAKSHAN PILLAY
SRI.PIRAPPANCODE V.S.SUDHIR
SRI.V.VARGHESE
SMT.RESMI G. NAIR
SRI.SUNEESH.M.

O.P.NO.1037/2003 W

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY
   ITS CHIEF SECRETARY, SECRETARIAT,
   THIRUVANANTHAPURAM.

2. OMBUDSMAN FOR LOCAL
   SELF GOVERNMENT INSTITUTIONS,
   THIRUVANANTHAPURAM.

3. K.K.PURUSHOTHAMAN,
   PADHATHI FINANCE COMMITTEE CHAIRMAN,
   PEEDIKAPARAMBIL VEEDU, III-155,
   SACHIVOTHAMAPURAM P.O.,
   KURICHY, KOTTAYAM.

4. T.S.SABU,
   THARUVANKUZHIYIL P.O.,
   SACHIVOTHAMAPURAM P.O.,
   KURICHY, KOTTAYAM DIST.

5. ABRAHAM JACOB, MEMBER,
   MUTTATHUKADAVU SAMAGRA NALIKERA VIKASANA
   JALASECHANA PADHATHI, KURICHY GRAMA PANCHAYATH.

6. P.K.SUGATHAN, CONVENER,
   MUTTATHUKADAVU JALASECHANA PADHATHI,
   KURICHY PANCHAYATH,
   PUTHUPARAMBUMANDIRAM, (ARUNODAYAM),
   SACHIVOTHAMAPURAM P.O., KURICHY, KOTTAYAM.

7. STATE ELECTION COMMISSION, ELECTION
   COMMISSION OFFICE, CORPORATION BUILDING,
   THIRUVANANTHAPURAM.

8. DEPUTY DIRECTOR OF PANCHAYATHS,
   THIRUVANANTHAPURAM.

BY ADV. SRI.MURALI PURUSHOTHAMAN, SC,K.S.E.COMM for R7
SRI.K.REGHU KOTTAPPURAM for R5
SMT.URSULA FRANCIS
SRI.M.P.MADHAVANKUTTY
BY GOVERNMENT PLEADER SMT. M. LALITHA NAIR for R1 & R2

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 01/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.1868/2003 IN O.P.NO.1037/2003W

DISMISSED

01/11/2006 **SD/-K.M.JOSEPH, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE TECHNICAL SANCTION GRANTED BY THE EXECUTIVE ENGINEER, MINOR IRRIGATION DIVISION, KOTTAYAM (CONVENER, MARAMATHU UPASAMITHY) DTD. 26/05/1998.**

EXT.P2: **COPY OF THE LETTER NO.E3-2642/97 DTD. 26/05/1998 OF THE EXECUTIVE ENGINEER.**

EXT.P3: **COPY OF THE RESOLUTION DTD. 8/06/98 OF KURICHY GRAMA PANCHAYAT.**

EXT.P4: **COPY OF THE AGREEMENT ENTERED INTO BETWEEN P.K.SUGATHAN AND THE SECRETARY OF THE PANCHAYAT DTD. 25/06/1998.**

EXT.P5: **COPY OF THE RECEIPT DTD. 25/06/1998 ISSUED BY SRI. P.K. SUGATHAN, THE 6TH RESPONDENT.**

EXT.P6: **COPY OF THE ACKNOWLEDGEMENT OF RECEIPT DTD. 3/11/1998.**

EXT.P7: **COPY OF THE RECEIPT DTD. 18/11/1998 ISSUED BY SRI. P.K.SUGATHAN, THE 6TH RESPONDENT.**

EXT.P8: **COPY OF THE RELEVANT EXTRACT OF THE PETTY CONTRACT BILL EVIDENCING THAT SRI. P.K. SUGATHAN RECEIVED RS.80,000/-.**

EXT.P9: **COPY OF THE RECEIPT ISSUED BY P.K.SUGATHAN DTD. 30/03/1999.**

EXT.P10: **COPY OF THE RELEVANT EXTRACT OF THE PETTY CONTRACT BILL EVIDENCING THAT SRI. P.K.SUGATHAN RECEIVED RS.59,916/-.**

EXT.P11: **COPY OF THE RECEIPT DTD. 19/01/2000 ISSUED BY P.K.SUGATHAN EVIDENCING THAT HE RECEIVED RS.20,000/-.**

..2/-

EXT.P12: COPY OF THE RECEIPT DATED 8/05/2000 ISSUED BY SRI.P.K.SUGATHAN TO THE SECRETARY, EVIDENCING THAT HE RECEIVED RS.29,063/-.

EXT.P13: COPY OF THE COMPLAINT DTD. 8/03/2001 FILED BY THE 3RD RESPONDENT BEFORE THE 2ND RESPONDENT.

EXT.P14: COPY OF THE NOTICE DTD. 23/06/2001 ISSUED BY THE SECRETARY, OMBUDSMAN, THIRUVANANTHAPURAM.

EXT.P15: COPY OF THE SHOW CAUSE NOTICE DTD. 20/06/2001 ISSUED BY THE THEN SECRETARY TO P.K.SUGATHAN.

EXT.P16: COPY OF THE NOTICE NO.O.P.828/01/III/KTM DTD. 31/07/2001 ISSUED BY THE 2ND RESPONDENT TO THE SECRETARY.

EXT.P17: COPY OF THE DEMAND NOTICE DTD. 28/08/2001 UNDER R.R.ACT.

EXT.P18: COPY OF THE WRITTEN STATEMENT DTD. 20/04/2001 ISSUED BY THE THEN SECRETARY OF THE PANCHAYAT TO THE 2ND RESPONDENT.

EXT.P19: COPY OF THE PETITION DTD. 3/12/2002 FILED BY THE SECRETARY THE 16TH PETITIONER HEREIN TO THE 2ND RESPONDENT.

EXT.P20: COPY OF THE ORDER DTD. 3/12/2002 IN O.P.828/2001 OF THE 2ND RESPONDENT.

EXT.P21: COPY OF THE RESOLUTION NO.III (D) DTD. 23/12/2002PASSED BY THE KURICHY GRAMA PANCHAYAT.

6TH RESPONDENT'S EXHIBITS:

EXT.R6(A): COPY OF REPRESENTATION DTD. 22/08/2005 SUBMITTED BY 6TH RESPONDENT BEFORE THE 16TH PETITIONER.

EXT.R6(B): COPY OF REPLY DTD. 03/09/2005 SENT BY 16TH PETITIONER TO THE 6TH RESPONDENT.

/TRUE COPY/

KSS

K.M.JOSEPH, J.

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O.P. No.1037 OF 2003

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Dated this the 1st day of November, 2006.

JUDGMENT

Petitioners challenge Ext.P20. It is an order passed by the Ombudsman for Local Self Government Institutions. Case of the petitioners, in brief, is as follows:

Petitioners 1 to 15 are the duly elected office bearers of the election held in 2000. It would appear that there was a project which was approved. The sixth respondent was the Convenor. The project was approved much earlier to the date of election in 2000. Petitioners took charge on 2.10.2000. First petitioner was thereafter elected as President. The estimate impugned for the project in question was approved by Ext.P2 by the Executive Engineer as is borne out by Ext.P2. It is the case of the petitioners that the sixth respondent was given various sums of money under various receipts for completion of the project. Third respondent, however, filed a complaint before the Ombudsman. Thereafter, respondents 4 and 5 were shown as additional petitioners. The complaint, it would appear, was to complete

the project. According to petitioners, the Secretary was served with the order by the Ombudsman calling upon him to recover the amounts from sixth respondent. It is the case of petitioners that sixth respondent did not give proper accounts and the execution of the work was delayed. But, according to them, they took proper steps for recovery of the amount as directed. However, by Ext.P20, it is found that Panchayat fund is maladministered. It is further found that the amount directed to be recovered from the Convenor is a revenue loss to the Panchayat and that the President who was present in court as also the Secretary, representing the Committee have admittedly not taken serious note of the directions of the court. Further, the Ombudsman has directed the Deputy Director to initiate proceedings to recover the amount quantified and discernible from the demand notice, from the members of the Committee, the Secretary who is responsible for implementing the project, and from the Convenor. There was a further direction that the proceedings shall be completed within six months. It is also found that the liability of the Committee Members, the Secretary as also the Convenor is joint and several. It is further found that

Shri.T.S.Sabu and Shri. Abraham Jacob are at liberty to proceed against the Convenor for recovery of the amount said to be due to them from the Convenor. The Secretary of the Ombudsman was also directed to forward the findings of maladministration to the Election Commission which is empowered to disqualify the Members of the Committee and to declare that the Committee shall not continue in power.

2. The case of the petitioners would appear to be that they were elected into the office and took charge on 2.10.2000. But as far as petitioners 1 and 12 are concerned, it is stated that they were members of the earlier Committee, who were re-elected. In fact, the 12th petitioner was the former President of the Panchayat. The first petitioner was a member of the former Committee also. Counsel for the petitioners relied on Ext.P19, which it is stated, was filed on the day on which the order was passed and it is their case that the same has not been considered. It is pointed out that in fact the first petitioner is brought into the picture in his capacity as the President, who took charge on the basis of the election in 2000. No doubt counsel for the Convenor submits that in fact the work was completed. As far as

petitioners 2 to 11 and 13 to 15 are concerned, they were members who were elected for the first time in the year 2000. Their case requires to be reconsidered. As far as petitioner No.1 is concerned, it would appear that he is brought in the picture in his capacity as President who took charge in the election in 2000, though no doubt he was a member of the earlier Committee also. As against 12th petitioner also, counsel would point out that, in fact no individual responsibility is seen fixed and there is no discussion about the 12th petitioner as such. Therefore I feel that the case of the petitioners as a whole should be reconsidered and a fresh decision taken in accordance with law after hearing the parties within a period of three months from the date of receipt of a copy of this judgment.

I feel that the findings as against the petitioners in Ext.P20, cannot be sustained and a fresh consideration is necessary after hearing them. I make it clear that I have not vacated the findings as against the sixth respondent. Sixth respondent has not chosen to challenge Ext.P20. I also make it clear that the observation of the Ombudsman that Shri.T.S.Sabu and Sri.Abraham Jacob are at liberty to proceed

against the Convenor for recovery of the amount said to be due to them from the Convenor, is also not liable to be vacated.

Original Petition is disposed of as above.

Communicate this judgment to the second respondent, Ombudsman.

(K.M. JOSEPH, JUDGE)

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K.M.JOSEPH, J.

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O.P. No. 1037 OF 2003

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JUDGMENT

1.11.2006.